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Report on study of the Canadian legal position on immigration and citizenship as affecting women

REPORT ON STUDY OF THE CANADIAN LEGAL POSITION
ON IMMIGRATION AND CITIZENSHIP AS AFFECTING WOMEN

I. Summary of Explanations and Conclusions

This Study has proceeded on the assumption that the terms of reference contemplate discrimination in the sense of unfavourable distinction in legal rights or obligations in areas that have comparable application.

It is concluded, following a complete review of all Canadian statutes, regulations and reported judicial decisions relating to the above subject, that such legislation and jurisprudence involve no discrimination against women in that sense. Therefore, no recommendation for amendment is made in this Report.

It is considered useful to summarize and comment in this Report on legislative provisions and judicial decisions dealing separately with women in addition to indicating the general position in each field considered.

In considering the application of the statutes and regulations reviewed due regard has been given to subsection (6) of section 26 of the Interpretation Act, Statutes of Canada 1967, Chap. 7, reading:

"(6) words importing male persons include female persons...."

II. Immigration

A. Immigration Act, Revised Statutes of Canada 1952, Chap. 325

(1) Statutory provisions

With one exception, all of the provisions of substance in the Immigration Act, such as those pertaining to admission to Canada, Canadian domicile, prohibited classes, entry of non-immigrants, entry under permit, arrest and detention, inquiries, deportation and offences and penalties, employ neutral designations such as "person", "Canadian citizen", "immigrant", "non-immigrant", "members" of specified groups, "students", "tourists", "visitors", and "holders of a permit".

The only provision directed particularly to women is the prohibition in section 5 (e) against admission to Canada of "prostitutes". It is considered that this provision does not give rise to discrimination within the terms of reference.

(2) Immigration Regulations, Part I (made by Order in Council P. C. 1962-86 dated January 18, 1962, as amended)

As in the case of the Act, most of the provisions of these Regulations employ neutral designations such as "person" and "immigrant".

Additional neutral designations include "passenger", "stowaway", "independent applicant", "child" and "next closest relative".

Sections 31 and 33, in listing categories of individuals who may be sponsored and nominated for admission to Canada for permanent residence, contain female designations corresponding to all of the male designations. Such female designations include wife, fiancée, daughter, mother, grandmother, sister, niece, aunt and granddaughter.

(3) Immigration Inquiries Regulations (SOR/67-621 dated November 20, 1967)

These Regulations also employ the neutral designation "person" and contain no provisions directed particularly to women.

(4) Judicial decisions

In its decision in the case of In re Carmichael and Carmichael (1942) 2 W.W.R. 84, it was held by the British Columbia Supreme Court that there was nothing in the former Immigration Act, Revised Statutes of Canada 1927, Chap. 93, to support the contention that a wife could acquire under that statute a domicile separate and apart from her husband. However, it would appear that this decision has no application under the present Immigration Act having regard to the provision in section 4 thereof that Canadian domicile is acquired for the purposes of that Act by a "person" having a place of domicile for at least five years in Canada.

In The Queen et al v. Leong Ba Chai (1954) S.C.R. 10, the Supreme Court of Canada decided that a child, for whom application for admission to Canada as an immigrant had been made, should be recognized as legitimate under Canadian law. It was held that the status of legitimacy was governed by the law of the domicile of his father, China, which recognized secondary wives. This decision appears to be merely an application of the general

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domestic law under which the status of children is governed by the law of the domicile of the father. Therefore, it is not considered that this decision indicates any special discrimination against mothers in the Immigration field.

In Re Spalding (1955) 16 W.W.R. 157, the British Columbia Court of Appeal upheld the quashing of a deportation order made against a woman who sought admission into Canada at Vancouver as a British subject. The decision quashing the deportation order was made on the ground that no proper hearing was held. There is nothing to indicate that the result would have been any different if the applicant had not been a woman.

In Ex Parte Brent (1955) O.R. 480, the Ontario Court of Appeal upheld the quashing of a deportation order made under section 20 (4) (b) of The Immigration Regulations, 1953, on the ground that that section was invalid as an attempt to delegate to immigration officers powers that should have been exercised by the Governor in Council, and on the ground that a proper hearing had not been held. An appeal to the Supreme Court of Canada was dismissed on the ground only that the section of the Regulations was invalid. Attorney General of Canada v. Brent (1956) S.C.R. 318. There is nothing in either of these judgments to indicate that the result would have been any different if the applicant had not been a woman.

In King v. Brooks et al (1960) 24 D.L.R.(2d) 567, a deportation order in respect of a male immigrant was extended to his dependant wife under section 37 (1) of the Immigration Act.

However, it does not appear that that section gives rise to any discrimination since it applies to dependant members of a family where a deportation order is made against the "head of a family", and that phrase is defined in paragraph (h) of section 2 of the Act to mean "the person in the family upon whom the other members are mainly dependent for support".

In Louie Yet Sun v. The Queen (1961) S. C. R. 70, the Supreme Court of Canada upheld a deportation order made against the mother of a child who became a Canadian citizen by virtue of having been born in Canada. It was held that the status of the child could not render the mother qualified to remain in Canada since she had come here as a visitor and did not come within any admissible class for permanent residence. While the result in this case appeared to point to a position of possible hardship, there does not appear to be any discrimination within the terms of reference.

In Rebrin v. Bird and the Minister of Citizenship and Immigration (1961) S. C. R. 376, the Supreme Court of Canada upheld a deportation order made against Miss Rebrin on the ground that she was a member of a prohibited class described in paragraph (t) of section 5 of the Immigration Act. It was held that there was no defect in the proceedings leading to the deportation order and that the Appellant had not been deprived of her liberty except by due process of law, within the Canadian Bill of Rights, Statutes of Canada, 1960, Chap. 44. There is nothing to indicate that the

position would have been any different if the Appellant had not been a woman.

In re Vinarao (1967) 60 W.W.R. 298, a deportation order against a nurse from the Phillipines was upheld on the basis that there was no defect in the inquiry leading to the order and no breach of any statutory rights. There is nothing to suggest that the result would have been any different if the Appellant had not been a woman.

B. Immigration Aid Societies Act, Revised Statutes of Canada, 1952, Chap. 146

The main provisions of this Act employ neutral designations. For example, section 6 authorizes societies for the purpose of assisting "immigrants" to reach Canada and to obtain employment on their arrival. Section 13 authorizes a society to contract with its "members or with other persons".

Section 14 provides as follows:

- " 14. The society may
- (a) receive applications from persons desiring to obtain artisans, workmen, servants or labourers from Great Britain or any part of Europe."

While the classifications of persons made in that section appear to contemplate chiefly male immigrants, the word "servants" at least is clearly applicable to both sexes and, having regard to the apparent purpose of the section, it is concluded that no discrimination exists. Confirmation that section 14 and other sections relating to immigrant

employment are intended to apply to both sexes is given by the provision in section 19 that "any immigrant" making an arrangement for repayment of money advanced may "execute an instrument... binding himself or herself... to accept employment of the kind therein stated....".

C. Immigration Appeal Board Act, Statutes of Canada 1966-67, Chap. 90

(1) Statutory provisions

All of the provisions in this Act are of general application and there appears to be no possible basis for any discrimination. Only neutral designations such as "person", "Canadian citizen", and "permanent resident" are employed.

(2) Immigration Sponsorship Appeal Order (made by Order in Council P. C. 1967-1956 dated October 12, 1967)

Cross reference provisions in this Order make it clear that there is the same absence of discrimination as exists under the Canadian Citizenship Act and the Immigration Regulations, Part I.

For example, section 2 of the Appeal Order provides as follows:

"2. For the purposes of section 17 of the Immigration Appeal Board Act,

- (a) 'person' when used with reference to the taking of an appeal means a Canadian citizen, and
- (b) 'classes of relatives' in respect of whom a person may take an appeal means those relatives referred to in paragraphs (a) to (h) of subsection (1) of section 31 of the Immigration Regulations, Part I. "

- (3) Immigration Appeal Board Rules (made by Order in Council P. C. 1967-2084 dated November 2, 1967)

These Rules, which govern appeals to the Immigration Appeal Board, contain nothing indicative of any discrimination.

III. Citizenship

A. Canadian Citizenship Act, Revised Statutes of Canada 1952, Chap. 33, as amended

(1) Statutory provisions

Part I of this Act, containing provisions relating to natural-born Canadian citizens, employs only neutral designations, most of such provisions being directed to a "person".

Part II of this Act, dealing with Canadian citizens other than natural-born, contains in sections 9 (1) (d) and 10 (3) special provisions for citizenship rights in favour of women whose citizenship position is affected by marriage. Since both of these provisions are favourable, no discrimination is indicated.

Apart from those sections, the provisions of Part II employ neutral designations such as "person", "Indian", "Canadian citizen", "British subject", "applicant for a certificate of citizenship", and "child".

The provisions of Part III of this Act, dealing with loss of Canadian citizenship, also employ the neutral designation

"Canadian citizen", defined in section 2 (b) of the Act as "a person who is a Canadian citizen under this Act".

The same position pertains under Part IV of this Act which employs the designations "British subject" and "Commonwealth citizen".

Part V of this Act employs the neutral designation "alien".

(2) The Canadian Citizenship Regulations (made by Order in Council P. C. 1954-1190 dated August 18, 1954, as amended)

As in the case of the Citizenship Act, these Regulations use neutral designations such as "person", "British subject" and "Canadian citizen". The only provision which appears to be directed separately to women is contained in section 16 (1), providing for application for a certificate of citizenship by a woman who has ceased to be a British subject through marriage. This provision implements section 10 (3) of the Act, above referred to as a favourable provision giving rise to no discrimination.

(3) Judicial decisions

The only reported decisions under the Canadian Citizenship Act involving women are In re Kvasnak Estate (1951) 2 W. W. R. (NS) 174 and Regina v. Leach (1966) 1 O. R. 106.

In the first case it was held that the wife of a man who died domiciled in Saskatchewan was entitled to claim as a dependant under The Dependant's Relief Act of Saskatchewan, notwithstanding that she herself was an alien. In the second case a

female applicant for citizenship and her husband were initially refused citizenship because they declined on religious grounds to take the oath of allegiance. However, the Ontario Court of Appeal held that the applicants were entitled to take an affirmation of allegiance instead and that they were persons who were fit and proper to be granted citizenship.

Neither of these decisions reflect any discrimination against women.

B. Indian Act, Revised Statutes of Canada 1952, Chap. 149, as amended

(1) Statutory provisions

Most of the provisions of this Act employ neutral designations such as "Indian" and "member of a band", both of which are defined by relation to "person" in the following paragraphs of section 2:

"(g) 'Indian' means a person who pursuant to this Act is registered as an Indian or is entitled to be registered as an Indian. "

"(i) 'member of a band' means a person whose name appears on a Band List".

It would appear that none of the provisions of the Act directed specifically to female Indians give rise to any discrimination within the areas under review. Section 10 provides that, where the name of the male person is added to or deleted from a Band List or a General List under the Act, the name of his wife also shall be added or deleted, as the case may be. Sections 11 and 12 contain special provisions regarding entitlement of wives and widows

to be registered as Indians under the Act.

Section 14 and section 16 (3) have special provisions regarding band membership and transfer of interests in lands or monies in respect of a woman who marries a member of another band, and section 15 (5) contains a special provision for women sharing in the distribution of annuities, interest monies or rents out of band funds.

Subsection (2) of section 67 reads as follows:

"(2) Where the Minister is satisfied that a female Indian has deserted her husband or family, he may order that payments of any annuity or interest money to which that Indian is entitled shall be applied to the support of her family."

It is considered that this provision gives rise to no discrimination because there is a corresponding provision in section 67 directed to male Indians.

There are also special provisions directed to wives in subsections (2) and (3) of section 108 reading as follows:

"(2) On the report of the Minister that an Indian woman married a person who is not an Indian, the Governor in Council may by order declare that the woman is enfranchised as of the date of her marriage and, on the recommendation of the Minister, may by order declare that all or any of her children are enfranchised as of the date of the marriage or such other date as the order may specify."

"(3) Where, in the opinion of the Minister, the wife of an Indian is living apart from her husband, the names of his wife and minor children shall not be included in an order under subsection (1) that enfranchises the Indian unless the wife has applied for enfranchisement, but where the Governor in Council is satisfied that such wife is no longer living apart from her husband, the Governor in Council may by order declare that the wife and minor children are enfranchised."

It is considered that these provisions do not give rise to any discrimination within the terms of reference.

(2) Regulations

The only provision directed specifically to women in any of the regulations made under the Indian Act is that contained in section 14 of the Indian Estates Regulations made by Order in Council P. C. 1955-1083 dated July 21, 1955, reading in part as follows:

" 14. The Minister may direct that a woman shall be deemed to be the widow of a deceased Indian... "

Other regulations under the Indian Act reviewed for the purposes of this Study are as follows:

Indian Bands Election Order made by Order in Council
P. C. 6016 dated November 12, 1951, as amended

Regulations for Disposal of Forfeited Goods and Chattels
made by Order in Council P. C. 6106 dated
November 15, 1951

Indian Quartz Mining Regulations made by Order in Council
P. C. 1954-1366 dated September 17, 1954,
as amended

Indian Reserve Traffic Regulations made by Order in Council
P. C. 1954-1368 dated September 17, 1954, as
amended

Indian Timber Regulations made by Order in Council
P. C. 1954-2025 dated December 22, 1954

Indian Oil and Gas Regulations made by Order in Council
P. C. 1958-339 dated March 4, 1958, as amended

Indian Loan Regulations made by Order in Council P. C.
1957-633 dated May 9, 1957, as amended

Indian Referendum Regulations made by Order in Council
P.C. 1958-1451 dated October 23, 1958

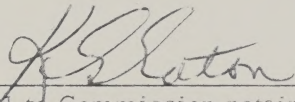
Indian Places of Amusement Regulations made by Order
in Council P.C. 1960-1531 dated November 10, 1960

Indian Mining Regulations made by Order in Council P.C.
1961-371 dated March 16, 1961

(3) Judicial decisions

The only reported decision under the Indian Act involving a woman is Diabo v. Rice (1942) C.S. 418, holding that the estate of a deceased Indian cannot be seized in satisfaction of a judgment rendered against his widow. This decision does not appear to involve any apparent discrimination.

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